

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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NASEAN BONIE,

**MEMO ENDORSED**

Plaintiff,

- against -

ANTHONY ANNUCCI, et al.

Defendants.  
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**NOTICE OF MOTION  
TO STRIKE OR DISMISS**

**PLEASE TAKE NOTICE** that upon the accompanying memorandum of law, Defendants Correctional Officer Ileshema Thomas and David Mazzalla, by their attorney, Letitia James, the Attorney General of the State of New York, will move this Court before the Honorable Kenneth M. Karas, United States District Judge, United States Courthouse, 300 Quarropas Street, White Plains, New York 10601, on a date set by the Court, for an Order pursuant to Federal Rules of Civil Procedure 12(b) and 12(f), dismissing Plaintiff's Second Amended Complaint or striking any new claims or allegations therein, and for such further relief as this Court deems just and proper.

**PLEASE TAKE FURTHER NOTICE** that per the Court's Order of November 14, 2023 (Docket No. 467), any opposition submissions are due on December 21, 2023.

Dated: New York, New York  
November 20, 2023

LETITIA JAMES

Attorney General State of New York

*Attorney for Defendants Thomas and Mazzalla*

By: /s/ Daniel S. Kirschbaum

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On March 30, 2023, this Court issued an Order granting in part and denying in part Defendants' Motion to Dismiss Plaintiff's Amended Complaint. (See Dkt. No. 369.) In the same Order, the Court gave Plaintiff 30 days from the date of the Order to file a Second Amended Complaint ("SAC"). (See *id.*) On April 25, 2023, in response to Plaintiff's request for an extension, the Court reiterated that Plaintiff's deadline to file a SAC was May 1, 2023. (See Dkt. No. 386.) On May 9, 2023, at a status conference, which Plaintiff attended, the Court confirmed that Plaintiff missed the deadline to file a SAC. (See Dkt. (Minute Entry dated 5/9/23).) On May 15, 2023, Defendants filed a proposed case management plan, (see Dkt. No. 426), which the Court signed the following day, (see Dkt. No. 428). On September 15, 2023, approximately four and half months after the deadline, and without leave from the Court, Plaintiff filed a SAC. (See Dkt. No. 443.) On November 20, 2023, Defendants moved to strike Plaintiff's SAC pursuant to Federal Rule of Civil Procedure 12(f), which the Court now grants. FRCP Rule 15(a)(2) permits a party to amend the complaint "only with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). Here, Plaintiff did not file a SAC within the time the Court allotted to Plaintiff and instead filed a SAC without leave more than four months later. As such, the Court concludes that it is within its discretion to strike Plaintiff's SAC. See *Stiegman v. New York State Off. of Info. Tech. Servs.*, No. 19-CV-18, 2020 WL 13700276, at \*2 (N.D.N.Y. May 6, 2020), *aff'd*, 2020 WL 13700275 (N.D.N.Y. Sept. 28, 2020) (noting that court struck pro se plaintiff's amended complaint, where it violated two of its prior order); see also *Ogbon v. Beneficial Credit Servs., Inc.*, No. 10-CV-3760, 2013 WL 1430467, at \*5 (S.D.N.Y. Apr. 8, 2013) (noting that court dismissed plaintiff's SAC, where plaintiff failed to abide by court's deadline to amend complaint); *Brown v. W. Valley Env't Servs., LLC*, No. 10-CV-210, 2010 WL 3369604, at \*10 (W.D.N.Y. Aug. 24, 2010) (striking amended complaint, which was filed without leave two months after deadline). Accordingly, the controlling complaint in this case is Plaintiff's Amended Complaint filed on March 30, 2020. (See Dkt. No. 19.) The Clerk of Court is respectfully requested to terminate the pending Motion at Dkt. No. 468.

SO ORDERED. 8.8.24



cc: Nasean Bonie, Plaintiff *Pro Se*

## DECLARATION OF SERVICE

DANIEL S. KIRSCHBAUM, an attorney admitted to practice in the courts of the State of New York, declares as follows:

I am an attorney licensed to practice in the State of New York, and an Assistant Attorney General in the office of Letitia James, Attorney General of the State of New York. I am over 18 years of age and not a party to this action.

On November 20, 2023, I served copies of the following papers:

DEFENDANTS THOMAS' AND MAZZELLA'S NOTICE OF MOTION TO STRIKE OR DISMISS; and

DEFENDANTS THOMAS' AND MAZZELLA'S MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT OR TO STRIKE ANY NEW CLAIMS OR ALLEGATIONS ASSERTED THEREIN

on the following person at the following address:

NASEAN BONIE, Plaintiff Pro Se  
DIN # 15A1872  
Sing Sing Correctional Facility  
354 Hunter Street  
Ossining, NY 10562

by depositing a copy of the papers enclosed in a properly addressed wrapper with proper postage affixed into the custody of the U.S. Mail.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 20, 2023  
New York, New York

/s/ Daniel S. Kirschbaum  
Daniel S. Kirschbaum  
Assistant Attorney General